

August 2, 2004

IMMEDIATE RELEASE

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OF THE COURT, BUT IS SOLELY FOR
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IN THE SUPREME COURT OF THE STATE OF IDAHO
Docket No. 29896-29901

LAWRENCE ("BUD") MOON, JR.,)
individually and on behalf of all others)
similarly situated, ALEX H. MOON, by and)
through her parents and guardians, TRINA)
H. MOON, and JAMES H. MOON,)
individually and on behalf of all others)
similarly situated, KALEY F. MOON, by and)
through her parent and guardian, LAURA F.)
MOON, individually and on behalf of all)
others similarly situated, JEANNE)
WOLCOTT, individually and on behalf of all)
others similarly situated, JERRY VICKERS,)
individually and on behalf of all others)
similarly situated, BRUCE CHARLES)
ROTHERMEL, individually and on behalf of)
all others similarly situated,)

Plaintiffs-Respondents,)

v.)

NORTH IDAHO FARMERS)
ASSOCIATION; WAYNE MEYER,)
WILLIAM DOLE, MICHAEL DOLE,)
WARREN DOLE, JACQUOT FARMS)
ENTERPRISES, INC., SATCHWELL)
FARMS, INC., WALLACE MEYER,)
TERRELL K. BAUNE, BAUNE FARMS,)
INC., PAUL DESHIELL, ARNOLD)
BRINCKE KEITH DAMAN, PAUL)
DAMAN, DENNY BROS., L.L.C., CHAD)
DENNY, MATTHEW DRECHSEL,)
DRESCHSEL BROTHERS, INC., DENNIS)
DUNCAN, DAVID DUNCAN, CHRIS)
DUNCAN, JOYCE DUNCAN, RANDY)
DUNCAN, DAVID FISH, THOMAS)
FREEBURG, DAVID GUMM, CHARLES)
A. HAHNER, HAHNER FARMS, INC.,)
LARRY HANSEN, JOYCE HANSEN,)

Boise, May 2004 Term

2004 Opinion No. 103

Filed: August 2, 2004

Frederick C. Lyon, Clerk

MARTIN HANSON, HATTER CREE)
FARMS, INC., DON HAY, CLARENCE)
HAEG, RANDY HOLT, DUANE)
JENNESKENS, CINDY JANNESKENS,)
DALE R. JOHNSON, TED LACY, PHILLIP)
LAMPERT, NICK LAWSON, CASEY)
LAWSON, ALLEN LEWIS, MAPLE LEAF)
FARM, INC., HERBERT W. MILLHORN,)
MILLHORN FARMS, INC., BRUCE)
MILLS, RICHARD MORRISON, ELMER)
NESS, CHRIS R. RAM, MICHAEL)
ROECKS, ROGADA FARMS, INC., JOHN)
SCHULTZ, KARL SCHULTZ, TAMMY)
SCHULTZ, RON TEE, ALLEN THOMA,)
WINDY HILL FARM, INC., TODD F.)
WRIGHT, GARY WRIGH, WRIGHTS,)
INC.; WADE MC LEAN, DOUG BRUCE,)
ERLING PLACE, MICHAEL SCHLEPP,)
GARY FRENCH; LAMPERT FARM)
RANCH, INC., EARL CLAUSEN,)
MICHAEL LA SHAW, CATHERINE)
MORRIS, TERRY NICHOLS, EUGENE)
TOWNE, JEFF BLOOMSBURG, BRIAN LA)
SHAW, JOE SIEVERS; BERGEN)
BOTHMAN,)

Defendants-Appellants,)

and)

SCHLEPP RANCH, CLAUSEN FARMS,)
INC., LARRY HEATON, DAVID)
LAMPERT, ERIC LARSON and the STATE)
OF IDAHO,)

Defendants.)

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LAMPERT FARM & RANCH, INC., EARL)
CLAUSEN, MICHAEL LA SHAW,)
CATHERINE MORRIS, TERRY NICHOLS,)
EUGENE TOWNE, JEFF BLOOMSBURG,)
BRIAN LA SHAW, LARRY HEATON and)
JOE SIEVERS; G. WADE MC LEAN,)
DOUG BRUCE, MICHAEL SCHLEPP,)
GARY FRENCH and ERLING PLACE,)

Third-Party Plaintiffs-Appellants,
v.
TIM FREEBURG and MICHAEL FREEBURG; HENRY BENTZ, CHESTER FRANZ, d/b/a DOUBLE F. RANCH, MICHAEL HEMKEN, HEMKEN FARMS, INC., TERRY JACKLIN and WALTER MEYER,
Third-Party Defendants-Appellants,
and
SHERRY CLAUS, as personal representative of the Estate of JOHN CARTER, GARY JOHNSON, d/b/a D & G FARMS, DAMAN BROTHERS PARTNERSHIP, GARY DRESHEL, d/b/a RESHEL BROTHERS, JIM FISCHER, FORD GUMM, ALVIN HAAS, HAAS FARMS GENERAL PARTNERSHIP, FRANCIS HUGHES, J.R. SIMPLOT COMPANY, d/b/a JACKLIN SEED-SIMPLOT, RODNEY JACOT, TED LACY, d/b/a LACY FARM ENTERPRISES, THELMA MC CLELLAN, as personal representative of the Estate of L.E. MC CLELLAN, WILLIAM MELLICK, WALTER MEYER, GLEN MILES, MORRFARMS, INC., HEATON FARMS PARTNERSHIP, KSH PARTNERSHIP, GERALD HOLT d/b/a ROCKCREEK,
Third-Party Defendants.

Appeal from the District Court of the First Judicial District, State of Idaho, Kootenai County. Hon. John Thomas Mitchell, District Judge.

The Court upholds the amendments to I.C. § 22-4801 et seq., as constitutional according to the Idaho and United States Constitutions.

Hall, Farley, Oberrecht & Blanton; and Batt & Fisher, Boise, for appellants North Idaho Farmers.

Peter C. Erbland, Boise, for appellants Meyer through Wrights, Inc. Peter C. Erbland argued for appellants.

Clements, Brown & McNichols, Lewiston, for appellants McLean through French.

Michael E. Ramsden and Jedediah James Whitaker, Coeur d'Alene, for appellants Lampert Farm through Sievers.

Brady Law, Chartered, Boise, for appellants Bothman, Bentz and Jacklin.

D. Samuel Eismann, Coeur d'Alene, for Freeburg through Hemken Farm.

Gordon Law Offices, Boise and Hagens, Berman LLP, Seattle, WA. for respondents. Steve W. Berman argued.

Hon. Lawrence G. Wasden, Attorney General; Clive D. Strong, Deputy Attorney General; Clay Riggs Smith, Deputy Attorney General, Boise, for amicus curiae, State of Idaho. Clay Riggs Smith argued.

The Idaho Supreme Court upheld the proposed amendments of the Idaho State Legislature and I.C. § 22-4801, et seq. which were passed by the 2003 Legislature. The Idaho Supreme Court found those amendments to be constitutional according to the Idaho and United States Constitutions.

The plaintiffs in this lawsuit are individuals claiming sensitivity to grass smoke who filed an action against various seed growers in northern Idaho. The seed growers traditionally burn the post harvest straw and stubble in their fields as part of their farming activities. In April, 2003, Governor Kempthorne signed House Bill 391 into law and it was passed as an emergency measure and amended the Smoke Management and Crop Residue Disposal Act of 1999. This new legislation effectively extinguished liability for all northern Idaho grass farmers that burn in compliance with provisions of the Act.

Most importantly, I.C. § 22-4803A(6) exempted crop residue burning from Idaho's private or public nuisance law as well as indicated it was not a trespass to burn crop residue according to the Act. Specifically the Idaho Supreme Court found that the HB 391 was not an unconstitutional taking of private property under either the Idaho or the United States Constitution. The Court also found that HB 391 was not a violation of

the Idaho Constitution's limitation on the interest of the common welfare. Additionally, the Supreme Court found HB 391 was not a local or special law in violation of Art. III, § 19 of the Idaho Constitution.

Specifically the Court found there was no authority in Idaho holding that a right to maintain a nuisance is an easement which can necessitate the payment of damages. The Court also followed established precedent by holding the legislature cannot abolish common law causes of action entirely or impose limitations on common law causes of actions without violating Art. I, § 19 of the Idaho Constitution. Justice Kidwell dissented from the majority opinion.